

Executive Summary – Enforcement Matter – Case No. 43965
CULLEN TEXACO, INC dba Cullen Shell
RN100875145
Docket No. 2012-0789-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cullen Shell, 7401 Cullen Boulevard, Houston, Harris County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 24, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$33,850

Amount Deferred for Expedited Settlement: \$6,770

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$760

Total Due to General Revenue: \$26,320

Payment Plan: 35 payments of \$752 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Poor

Site/RN - Poor

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 43965
CULLEN TEXACO, INC dba Cullen Shell
RN100875145
Docket No. 2012-0789-PST-E**

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 1, 2011

Date(s) of NOE(s): March 8, 2012

Violation Information

1. Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, Respondent did not report a suspected release within 24 hours after receiving a failed statistical inventory reconciliation ("SIR") evaluation for the month of January 2011 [30 TEX. ADMIN. CODE § 334.72].
2. Failed to investigate a suspected release of a regulated substance within 30 days of discovery. Specifically, SIR results for January 2011 indicate a suspected release was not investigated [30 TEX. ADMIN. CODE § 334.74].
3. Failed to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures at the site:

- a. Submitted documentation demonstrating that release detection is being conducted at the Facility as of June 12, 2012; and
- b. Submitted documentation certifying that a process for reporting and investigating suspected releases was established at the Facility on April 16, 2012.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 43965
CULLEN TEXACO, INC dba Cullen Shell
RN100875145
Docket No. 2012-0789-PST-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Elvia Maske, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0789; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Nick Challa, President, CULLEN TEXACO, INC, 7401 Cullen Boulevard, Houston, Texas 77051

Respondent's Attorney: Janessa M. Glenn, Moltz Morton & Glenn, LLP, Travis Oaks, 5113 Southwest Parkway, Suite 120, Austin, Texas 78735



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Mar-2012	Screening	19-Mar-2012	EPA Due	
	PCW	5-Jul-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	CULLEN TEXACO, INC dba Cullen Shell	
Reg. Ent. Ref. No.	RN100875145	
Facility/Site Region	12-Houston	Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No.	43965	No. of Violations	3
Docket No.	2012-0789-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$27,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 30.0% Enhancement **Subtotals 2, 3, & 7** \$8,250

Notes

Enhancement for one order with denial of liability and poor performer classification.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$2,000

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$444
Approx. Cost of Compliance \$6,600

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$33,750

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.3% **Adjustment** \$100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount \$33,850

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$33,850

DEFERRAL 20.0% Reduction **Adjustment** -\$6,770

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$27,080

Screening Date 19-Mar-2012

Docket No. 2012-0789-PST-E

PCW

Respondent CULLEN TEXACO, INC dba Cullen Shell

Policy Revision 2 (September 2002)

Case ID No. 43965

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100875145

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one order with denial of liability and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 19-Mar-2012

Docket No. 2012-0789-PST-E

PCW

Respondent CULLEN TEXACO, INC dba Cullen Shell

Policy Revision 2 (September 2002)

Case ID No. 43965

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100875145

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, the Respondent did not report a suspected release within 24 hours after receiving a failed statistical inventory reconciliation ("SIR") evaluation for the month of January 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

398 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

x (mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$3,260

This violation Final Assessed Penalty (adjusted for limits) \$3,260

Economic Benefit Worksheet

Respondent CULLEN TEXACO, INC dba Cullen Shell
Case ID No. 43965
Reg. Ent. Reference No. RN100875145
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	15-Feb-2011	16-Feb-2011	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The date required is the date of the suspected release and the final date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 19-Mar-2012

Docket No. 2012-0789-PST-E

PCW

Respondent CULLEN TEXACO, INC dba Cullen Shell

Policy Revision 2 (September 2002)

Case ID No. 43965

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100875145

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release of a regulated substance within 30 days of discovery. Specifically, SIR results for January 2011 indicate a suspected release that was not investigated.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 4

359 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$20,000

Four quarterly events are recommended from the investigation due date of March 15, 2011 to the March 8, 2012 record review date.

Good Faith Efforts to Comply

10.0% Reduction

\$2,000

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent achieved compliance on April 16, 2012.

Violation Subtotal \$18,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$273

Violation Final Penalty Total \$24,071

This violation Final Assessed Penalty (adjusted for limits) \$24,071

Economic Benefit Worksheet

Respondent CULLEN TEXACO, INC dba Cullen Shell
Case ID No. 43965
Req. Ent. Reference No. RN100875145
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	15-Mar-2011	16-Apr-2012	1.09	\$273	n/a	\$273

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The date required is the date the investigation was due and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$273

Screening Date 19-Mar-2012

Docket No. 2012-0789-PST-E

PCW

Respondent CULLEN TEXACO, INC dba Cullen Shell

Policy Revision 2 (September 2002)

Case ID No. 43965

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100875145

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

11 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One monthly event is recommended based on documentation of the violation during the March 8, 2012 record review date to the March 19, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$71

Violation Final Penalty Total \$6,519

This violation Final Assessed Penalty (adjusted for limits) \$6,519

Economic Benefit Worksheet

Respondent CULLEN TEXACO, INC dba Cullen Shell
Case ID No. 43965
Reg. Ent. Reference No. RN100875145
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	1-Jul-2011	12-Jun-2012	0.95	\$71	n/a	\$71

Notes for DELAYED costs

Estimated cost to provide proper release detection for the USTs at the Facility. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$71

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601596463	CULLEN TEXACO, INC	Classification: POOR	Rating: 162.50
Regulated Entity:	RN100875145	Cullen Shell	Classification: POOR	Site Rating: 162.50
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	HG7060S 62782	
Location:	7401 CULLEN BLVD, HOUSTON, TX, 77051			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	April 19, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 19, 2007 to April 19, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Elvia Maske	Phone:	(512) 239 - 0789	

Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? YES
- Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- If YES, who is the current owner/operator? N/A
- If YES, who was/were the prior owner(s)/operator(s)? N/A
- If YES, when did the change(s) in owner or operator occur? N/A
- Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 08/15/2008

ADMINORDER 2006-1517-PST-E

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)
30 TAC Chapter 115, SubChapter C 115.246(3)
5C THSC Chapter 382 382.085(b)

Description: Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service. Specifically, Stage II maintenance records and a copy of the California Air Resources Board Executive Order (G-70-191AA) were not being maintained at the Station.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THSC Chapter 382 382.085(b)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TX. Specifically, the Station did not test their equipment in 2005.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
2D TWC Chapter 26, SubChapter A 26.3475(c)
30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: Failed to provide a method, or combination of methods, of release detection requirements for all UST systems release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment. Specifically, the respondent did not monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Classification: Major

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)

Description: Failed to timely renew a previously issued UST delivery certificate by submitting a properly

completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
5C THSC Chapter 382 382.085(b)

Description: Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, swivel adapters were not installed on fill and vapor risers.

Classification: Major

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)

Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the respondent accepted fuel deliveries on July 2, July 6, July 12, July 15, July 19, July 24, July 30, August 1, August 4, and August 8, 2006.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube. Specifically, the respondent failed to label the fill tubes of the facilities USTs.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 12/10/2010 (880331)

2 03/08/2012 (937150)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CULLEN TEXACO, INC DBA
CULLEN SHELL
RN100875145

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2012-0789-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding CULLEN TEXACO, INC dba Cullen Shell ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division and the Respondent, represented by Janessa M. Glenn of the law firm of Moltz Morton & Glenn, LLP together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 7401 Cullen Boulevard in Houston, Harris County, Texas (the "Facility").
2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 13, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Thirty-Three Thousand Eight Hundred Fifty Dollars (\$33,850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Sixty Dollars (\$760) of the administrative penalty and Six Thousand Seven Hundred Seventy Dollars (\$6,770) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twenty-Six Thousand Three Hundred Twenty Dollars (\$26,320) of the administrative penalty shall be payable in 35 monthly payments of Seven Hundred Fifty-Two (\$752) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted documentation demonstrating that release detection is being conducted at the Facility as of June 12, 2012; and
 - b. Submitted documentation certifying that a process for reporting and investigating suspected releases was established at the Facility on April 16, 2012.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to report a suspected release to the agency within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on July 1, 2011 and a record review conducted on March 8, 2012. Specifically, the Respondent did not report a suspected release within 24 hours after receiving a failed statistical inventory reconciliation ("SIR") evaluation for the month of January 2011.
2. Failed to investigate a suspected release of a regulated substance within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on July 1, 2011 and a record review conducted on March 8, 2012. Specifically, SIR results for January 2011 indicate a suspected release was not investigated.
3. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on July 1, 2011 and a record review conducted on March 8, 2012.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: CULLEN TEXACO, INC dba Cullen Shell, Docket No. 2012-0789-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a

violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

9/21/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

7-17-12
Date

NICK CHALLA
Name (Printed or typed)
Authorized Representative of
CULLEN TEXACO, INC dba Cullen Shell

PRESIDENT
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.